

# **The Sacramento Bee**

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## **Ruling could spring inmates early**

**In a rare move, federal judges in Sacramento today will consider setting up a panel that may cap the state's burgeoning prison population.**

By Andy Furillo  
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Mahoning County got one. So did the District of Columbia. Today, the California prison system finds itself in line to get slapped with an inmate population cap under a hardly used federal legal process that has been on the books for 11 years.

In jurisdictions in Youngstown, Ohio, and Washington, D.C., the caps imposed by the so-called "three-judge courts" under the Prison Litigation Reform Act resulted in early release orders of few hundred inmates each.

In California, the figure is likely to reach into the tens of thousands -- if a three-judge court is created and if the panel agrees with population figures quoted by inmate rights lawyers who brought the action.

As a result, prison litigators from across the country are awaiting the ruling from U.S. District Court in Sacramento, where the plaintiffs will argue that the jam-packed conditions in California's overcrowded prisons are contributing to what federal judges have already determined to be the unconstitutional provision of prison medical care and mental health treatment to inmates.

"California presents the question of what happens when the political system of a state simply ignores a grotesque and obvious prison overcrowding situation for years and years and years," said John Boston, director of the Prisoners' Rights Project of the New York City Legal Aid Society.

"This is almost like *Brown v. the Board of Education*, where a fundamental question of civil rights has been ignored and has been evaded by the political system for a protracted period of time," he said. "The question is, who's going to solve the problem?"

Boston said a prisoner release order in California "will have a lot to do with how prison litigation is conducted" around the country in the near future.

"I think people are watching it closely," said professor Margo Schlanger, an expert on civil rights, constitutional law and prison litigation at Washington University School of Law in St. Louis. "California is a big system, and these are big cases. These cases are pushing the boundaries of the courts' abilities to effectuate constitutional reform, so watching how they

proceed is real important."

Inmates rights lawyers filed motions last November in the pending class-action medical and mental health cases for the creation of a three-judge court. One of the attorneys filed papers suggesting a release of 35,000 of the 173,003 inmates housed in California as of June 20.

"There's no factual dispute to the problem and its causes," said Michael Bien, one of the plaintiffs' lawyers in the case. "It seems to us that there is a unanimity that the standards of an overcrowding referral to a three-judge panel have been met and that the process needs to begin as soon as possible."

The state is arguing that Assembly Bill 900, the \$7.9 billion prison construction plan enacted by the Legislature and signed into law by Gov. Arnold Schwarzenegger in May, will add enough space to ease congestion.

"The governor and the (California Department of Corrections and Rehabilitation) are committed to making improvements in the delivery of medical and mental health care in all of CDCR's institutions," gubernatorial spokesman Bill Maile said. "The governor will continue to push forward to implement AB 900 ... and prevent the early release of dangerous criminals."

U.S. District Court Judges Lawrence Karlton of Sacramento and Thelton Henderson of San Francisco, who are presiding over the mental health and medical cases, will conduct a joint hearing today in the federal courthouse on I Street. Their ruling on creating the three-judge court could come from the bench.

Under provisions of the Prison Litigation Reform Act, which the Republican-controlled Congress passed and Democratic President Clinton signed in 1996, prison release orders can be enacted only if there was an earlier finding of a constitutional deprivation, the defendants had a reasonable time to fix it and the three judges find that overcrowding is the main cause of the problem.

The federal law was designed to deal with a plethora of jail and prison population caps that judges were imposing in the 1970s and 1980s, according to Schlanger. The idea behind the three-judge courts, she said, was to keep a single jurist from having the sole power to order early prisoner releases.

If Karlton or Henderson orders the creation of the three-judge court, Chief Judge Mary Schroeder of the 9th U.S. Circuit Court of Appeals will make the appointments to the panel. One of them would be the judge that asks for the panel, and another has to be from the same circuit.

The three-judge court would then hold hearings and make a decision on a prisoner release order. Prosecutors, county jailers and prosecutorial agencies all have standing under the PLRA to intervene in the case and oppose early releases. Assembly Republican leader Mike Villines of Clovis said he is prepared to argue against one, especially in light of the passage of the AB 900 prison bill.

"What we don't want is judicial activism before we let one of the most significant pieces of legislation of the year even start," Villines said.

Appeals of the three-judge decision would be made directly to the U.S. Supreme Court.

Since the PLRA went into effect, only the Mahoning County Jail in Ohio earlier this year and the District of Columbia lock-up in 1998 have been hit with prisoner release orders.

The Ohio case was prompted by inmate violence attributed to overcrowding, according to court papers.

Early releases there led to some "commotion," Youngstown Police Chief Jimmy Hughes said in a telephone interview Tuesday, when a number of criminals his agency arrested weren't incarcerated by jailers who had the federal court looking over their shoulders.

"Nobody went on a rampage, but we do feel there was an increase in crime," Hughes said of the Youngstown situation after the Feb. 26 three-judge order. "It seems to be tapering off now."

Mahoning County Jail Warden Jim Lewandowski said that since the order was imposed, local officials have increased jail staffing, improved their training, added bed capacity and instituted a range of alternative sanctions. The jail population now is higher than it was before the early releases. But the problem, Lewandowski said, has essentially been solved and violence at the jail has "absolutely" been stabilized.

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